

**Subject:** Re: Violation Report/Complaint Served on 2017-09-05 for BCDC Enforcement File No. ER2016.017

**Date:** Monday, October 16, 2017 at 3:42:24 PM Pacific Daylight Time

**From:** Bowers, John@BCDC <John.Bowers@bcdca.gov>

**To:** tlyons@sonomamarintrain.org <tlyons@sonomamarintrain.org>

**CC:** Trujillo, Matthew@BCDC <Matthew.Trujillo@bcdca.gov>, jflageollet@sonomamarintrain.org <jflageollet@sonomamarintrain.org>, Klein, Adrienne@BCDC <adrienne.klein@bcdca.gov>, Zeppetello, Marc@BCDC <marc.zeppetello@bcdca.gov>, ncra.mstogner@sbcglobal.net <ncra.mstogner@sbcglobal.net>

Dear Mr. Lyons,

I am writing to inform you that, based on the information contained in the Statement of Defense (SOD) received by us on October 6, 2017, we have decided to dismiss SMART from Enforcement Proceeding No. ER2016.017.

This dismissal is without prejudice. If in the course of this proceeding factual information comes to our attention that supports the view that SMART's involvement in the circumstances described in the Violation Report (VR) was other than as described in SMART's SOD, we will not hesitate to reinstate SMART as a respondent in this proceeding.

In its discussions with us, the NCRA has expressed an interest in exploring both short term (i.e., removal from the affected slough of debris from road repair activities) and long-term (i.e., either 1) reconstruction of Hunters Club Road or 2) removal of the road combined with removal of caretaker's residence to which the road provides access) solutions to the facts and circumstances described in the VR. We encourage SMART in the strongest possible terms to cooperate with NCRA as it explores these options, particularly the above-described long-term option. As long as Hunters Club Road continues to exist in its present condition, future washouts and discharges of gravel fill into the slough are not only foreseeable, they are, in light of the indisputably undersized culverts beneath the road, probable. We intend to closely monitor the future circumstances at this site and, in the event of any such future washouts and discharges, will not hesitate to bring additional enforcement proceedings against any and all responsible parties. (In its SOD SMART has declined to answer the question that I posed in my Sept. 14 message with respect to who, as between SMART and NCRA, has responsibility under the O&CA for maintenance of facilities on SMART's property that are unrelated to railroad operations.) However, I submit to you that such a future scenario is in the interests of nobody.

There is another reason why we urge SMART to work collaboratively with the NCRA on a long-term solution to the land use and environmental issues affecting this site. The discontinuation of the use of the caretaker's residence, various accessory structures, and the road may well constitute a "substantial change in use" of structures located within the area of the Commission's jurisdiction. Such a substantial change in use may require a permit from the Commission. Cal. Gov't Code § 66632. We will be in further contact with you about this particular aspect of the issues raised by the conditions at the subject site.

Finally, I would like to make an information request of you. Section 4.05 of the 2011 Operating and Coordination Agreement between SMART and NCRA provides for the exchange between the parties of "maintenance plans and budgets" and "maintenance expense annual reports." Please provide us with a copy of these plans, budgets, and reports for the period from 2014 to the present. If SMART is subject to the Cal. Public Records Act, please consider this request to be made under that law. Also, the Commission has the authority to subpoena these records. See Cal. Gov't Code § 66643; 14 CCR § 11320. However, the use of

these rather cumbersome procedures can be avoided if SMART either informs us that no such records exist, or, if they do exist, that SMART is willing to provide to us a copy thereof voluntarily.

Thank you for your anticipated future cooperation.

John Bowers  
Staff Counsel

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**From:** "Trujillo, Matthew@BCDC" <Matthew.Trujillo@bcdca.gov>  
**Date:** Monday, October 16, 2017 at 12:49 PM  
**To:** "Bowers, John@BCDC" <John.Bowers@bcdca.gov>  
**Subject:** FW: Violation Report/Complaint Served on 2017-09-05 for BCDC Enforcement File No. ER2016.017

**From:** Tom Lyons <tlyons@sonomamarintrain.org>  
**Date:** Thursday, October 5, 2017 at 2:38 PM  
**To:** Matthew Trujillo <Matthew.Trujillo@bcdca.gov>, Farhad Mansourian <FMansourian@sonomamarintrain.org>, "ncra.mstogner@sbcglobal.net" <ncra.mstogner@sbcglobal.net>  
**Cc:** David Anderson <DAnderson@are-corp.com>, "dbosco@boscolaw.com" <dbosco@boscolaw.com>, Jim Flageollet <jflageollet@sonomamarintrain.org>, Adrienne Klein <adrienne.klein@bcdca.gov>  
**Subject:** RE: Violation Report/Complaint Served on 2017-09-05 for BCDC Enforcement File No. ER2016.017

Dear Mr. Trujillo,

Please be advised that SMART is not seeking an extension to the deadline and has already filed the Statement of Defense for the Sonoma-Marin Area Rail Transit District (being served via overnight FedEx). As previously discussed with BCDC's staff and Counsel, SMART was erroneously made a party to this enforcement proceeding (No. 2016.017) and should have been summarily dismissed. Moreover, a simple review of the facts and allegations contained in the report can only lead to the conclusion that an enforcement action against SMART is neither authorized nor warranted under the McAteer-Peris Act.

Please do not hesitate to contact me should you have any question or wish to discuss this matter.

Sincerely,

**Thomas F. Lyons**  
General Counsel  
Sonoma-Marin Area Rail Transit District  
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